

STATE OF MICHIGAN
COURT OF APPEALS

PARK NURSING CENTER

Plaintiff-Appellant,

v

DEPARTMENT OF SOCIAL SERVICES,

Defendant-Appellee.

UNPUBLISHED
October 11, 1996

No. 173871
LC No. 93-303935 AA

Before: Murphy, P.J., and Reilly, J., and C.W. Simon, Jr.*, JJ

MEMORANDUM.

Plaintiff appeals as of right a circuit court order affirming an administrative law judge's decision to impose quality of care (QOC) penalties¹ against plaintiff's Medicaid reimbursement. Because the QOC penalties were described by defendant in a series of policy bulletins and the provisions were never promulgated as rules under MCL 24.231-24.264; MSA 3.560(131)-3.560(164) of the Administrative Procedures Act, we reverse.

A full recitation of the facts and the procedural history of this case is unnecessary. The policy bulletins describing the QOC system set forth policies and procedures that directly affect the care that plaintiff is statutorily mandated to provide. *Heritage Manor Inc v Department of Social Services*, ___ Mich App ___; ___ NW2d ___ (Docket No. 186619, issued 9/6/96), citing *AFSCME v Dep't of Mental Health*, 452 Mich 1, 8-9; ___ NW2d ___ (1996). Accordingly, defendant was required to promulgate the provisions regarding the QOC system as a rule under the APA. As in *Heritage Manor*, defendant's failure to promulgate the provisions as a rule precludes defendant from enforcing the penalties. The trial court's opinion and order affirming the assessment of the penalties is reversed.

In light of our conclusion, plaintiff's remaining challenges to the imposition of the penalties need not be discussed.

* Circuit judge, sitting on the Court of Appeals by assignment.

Reversed.

/s/ William B. Murphy

/s/ Maureen P. Reilly

/s/ Charles W. Simon, Jr.

¹ The QOC system was eliminated from the state's Medicaid plan that became effective October 1, 1990. The penalties that are at issue in this case were based on investigation of conditions in 1988 and 1989.